

THE HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARA CURTIS, CYNTHIA ALDRICH &
ALFRED CURRIER,

Plaintiffs,

v.

ILLUMINATION ARTS, INC., a Washington
corporation, ILLUMINATION ARTS
PUBLISHING, L.L.C., a Washington limited
liability company, JOHN M. THOMPSON,
and KIMMIE LYNN THOMPSON,

Defendants.

No. 12-00991-JLR

**OMNIBUS RESPONSE TO
DECLARATIONS OF DEFENDANTS
JOHN M. AND KIMMIE LYNN
THOMPSON AND MOTION TO STRIKE**

Omnibus Response and Motion to Strike
(12-00991-JLR)

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I. INTRODUCTION

Despite being represented by an attorney of record in this matter, defendants John and Kimmie Lynn Thompson recently filed a series of declarations on their own behalf. (*See* Decl. of Thompsons re: Status of Matthew King as Att’y (Dkt. #59); Decl. of Thompsons re: Att’y Fees (Dkt. #60); Decl. of Thompsons re: Valuation of Materials (Dkt. #62); Decl. of Thompsons re Produc. of Records (Dkt. #63).) The Local Rules and Federal Rules of Civil Procedure prohibit this conduct, and the filings are untimely. The Court should strike the declarations.

II. ARGUMENT

A. **The Court Should Strike the Declarations Because the Court Has Not Granted an Order of Substitution Allowing the Thompsons to Proceed Pro Se.**

A party that is represented by an attorney of record in a case cannot appear or act on his or her own behalf, or take any step in his or her case, until after the party has (1) requested by motion to proceed on his or her own behalf; (2) certified in such a motion that he or she has provided copies of the motion to his or her current counsel and to the opposing party; and (3) been granted an order of substitution by the Court terminating counsel and substituting the party to proceed pro se. Local Rules W.D. Wash. 83.2(b)(4). In addition, every written motion or other paper must be signed by at least one attorney of record in the attorney’s name, or if the party is *unrepresented*, by a party personally. Fed. R. Civ. P. 11(a).

The Thompsons are represented by an attorney of record in this case. (*See generally* Notice of Appearance at 1–2 (Dkt. #12) (Matthew R. King entering appearance on behalf of the Thompsons).) Mr. King attempted to withdraw as counsel, but the Court denied Mr. King’s motion to withdraw for failure to comply with the Local Rules. (*See* Mot. to Withdraw at 1–2 (Dkt. #49); Order Den. Mot. at 1–2 (Dkt. #54).) The Court also noted that a client’s consent to withdrawal is not dispositive and that the Court may consider a variety of factors in evaluating a motion to withdraw, including the prejudice withdrawal could cause other litigants, the harm withdrawal might cause the administration of justice, and the degree to which withdrawal will delay resolution

1 of the case. (*See id.* (citing *Bohnert v. Burke*, No. CV-08-2303-PHX-LOA, 2010 WL 5067695,
 2 at *2 (D. Ariz. Dec. 7, 2010).)¹ Accordingly, the Thompsons may not appear or act on their own
 3 behalf in this matter absent leave of the Court to do so. In addition, Rule 11 requires all papers
 4 submitted on the Thompsons' behalf to be signed by Mr. King. The Court should strike the
 5 declarations of the Thompsons for their failure to comply with the Local and Federal Rules.

6 **B. The Court Should Strike the Thompsons' Declarations as Untimely Responses.**

7 To the extent the Thompsons' declarations are offered as responses invited by the Court's
 8 November 21, 2013 Order, the Court should strike the declarations as untimely. The Court
 9 previously ordered the parties to file simultaneous response memoranda regarding a potential
 10 offset to damages by December 1, 2013, and simultaneous reply memoranda by
 11 December 11, 2013. (*See* 11/21/13 Order at 27 (Dkt. #55).) The Court also ordered the plaintiffs to
 12 submit a statement regarding attorneys' fees by December 1, 2013, and allowed the defendants to
 13 file a response to that submission within ten days of its filing. (*See id.* at 44.) The plaintiffs filed
 14 both a responsive memorandum and a declaration regarding attorneys' fees on November 27,
 15 2013. (*See* Response Mem. Regarding Offset to Damages (Dkt. #56); Decl. of Kurt E. Kruckeberg
 16 Regarding Att'ys' Fees (Dkt. #58).) The defendants failed to timely submit a response
 17 memorandum regarding an offset to damages or a response to the plaintiffs' submission regarding
 18 attorneys' fees. The Thompsons now appear to be filing this series of declarations as responsive
 19 memoranda. The Court admonished the parties that they should strictly adhere to the deadlines set
 20 by the Court in its November 21, 2013 Order. (11/21/13 Order at 45–46 (Dkt. #55).) The
 21 defendants failed to adhere to the Court's deadlines and continue to operate on their own schedule.
 22 The defendants and their counsel again delay resolution of this matter and interfere with the
 23 Court's need to manage its docket. The Court has already sanctioned the defendants and their
 24

25 ¹ Mr. King filed an amended motion to withdraw on January 6, 2014. (Am. Mot. to Withdraw Due to
 26 Termination (Dkt. #61).) The motion fails to address the concerns raised by the Court in its order denying
 Mr. King's original motion to withdraw, including the fact that the amended motion again fails to satisfy the
 electronic signature standard of the local electronic filing procedures. (*See* Order Den. Mot. at 3, n.2 (Dkt. #54).)

counsel for similar conduct on three separate occasions. (*See* 2/20/13 Order (Dkt. #19); 7/18/13 Order (Dkt. #43); 11/21/13 Order (Dkt. #55).) The Court should strike the declarations as untimely responses to its order.²

III. CONCLUSION

The Thompsons' recent series of declarations violate the Local Rules and the Federal Rules of Civil Procedure. If the declarations are intended to respond to the Court's November 21, 2013 Order, the declarations are untimely and again display the disregard for an expeditious resolution of this litigation that the Court has previously sanctioned on three separate occasions. The Court should strike the declarations.

DATED this 8th day of January, 2014.

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² In addition to violating the Local and Federal Rules regarding pro se filings and the general untimeliness of the responses, one of the declarations contains inadmissible evidence of settlement negotiations, which the Court should strike and should not consider. (*See* Decl. of Thompsons re: Att'y Fees at 4 (Dkt. #60).)

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Matthew R King
matthewrkinglaw@hotmail.com

John M. Thompson
jthompson@illumin.com

Kimmie Lynn Thompson
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DATED this 8th day of January, 2014, at Seattle, Washington.

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